

EXHIBIT A

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-10412-jlg

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5 In the Matter of:

6

7 DITECH HOLDING CORPORATION,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 May 17, 2019

17 3:37 PM

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21 B E F O R E :

22 HON JAMES L. GARRITY

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KAREN

1 HEARING re 1) Motion to Disband Committee (Doc #522)

2

3 HEARING re Statement of the Motion of Debtors for Entry of
4 an Order (I) Disbanding the Official Committee of Consumer
5 Creditors Appointed by the U.S. Trustee or, Alternatively,
6 (II) Limiting the Scope of Such Committee and Capping the
7 Fees and Expenses Which May be Incurred by Such Committee
8 (Doc #529)

9

10 HEARING re Objection of the Official Committee of Consumer
11 Creditors (Doc #548)

12

13 HEARING re Declaration of Victor Noskov in Support of the
14 Official Committee of Consumer Creditors' Objection to the
15 Debtors' Motion (Doc #549)

16

17 HEARING re Objection of the United States Trustee to the
18 Motion of the Debtors for Entry of an Order Disbanding the
19 Official Committee of Consumer Creditors (Doc #556)

20

21 HEARING re Opposition to Debtors' Motion to Disband the
22 Consumer Creditors' Committee filed by Wayne M. Greenwald on
23 behalf of Monique Scranton & 800 Consumer Creditors
24 (Doc #560)

25

1 HEARING re The Diamond Victims' Joinder in Objection to
2 Debtors' Motion to Disband Consumer Creditors Committee
3 (Doc #561) continued from 5/14/2019
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25 Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

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BY: BENJAMIN I. FINESTONE

VICTOR NOSKOV

P R O C E E D I N G S

THE COURT: All right. I apologize for the delay in our start. This is the Ditech Holding Corp., Case No. 19-10412. This is the adjourned hearing on the Debtors' motion for an order seeking to disband the Official Committee of Consumer Creditors. We heard argument and other matters on May 14th and adjourned the matter to today. And I will issue my decision now.

The matter before the Court is the Debtors' motion to an order pursuant to Sections 105(a) and 1102(a) of the Bankruptcy Code, one, disbanding the Official Committee of Consumer Creditors, which I'll refer to as the "Consumer Creditors Committee," appointed by the United States Trustee or alternatively, two, if the Court determines not to disband the Consumer Creditors' Committee, limiting such committee's scope solely to the treatment of consumer borrower claims under the plan or a sale transaction and capping the fees and expenses which may be incurred by such committee and its, excuse me, professionals to \$250,000 in the aggregate.

The motion is supported by the Ad Hoc Term Loan Group which is a term defined below. See ECF Number 529. The following parties oppose the motion: the U.S. Trustee; the Consumer Creditors Committee; approximately 800 consumer creditors represented by the firm of Wayne Greenwald, P.C.

1 -- I'll refer to them as "the Scranton Consumers;" Milan
2 Harris, individually and not in his capacity as a member of
3 the Consumer Creditors Committee; together with five other
4 consumers who assert that they are victims of a reverse
5 mortgage fraud scheme. See ECF Numbers 548, 556, 560, and
6 561.

7 The Official Committee of Unsecured Creditors did
8 not file a response to the motion.

9 Just one moment, please. If you have dialed in,
10 if you'd please mute your phone. We're hearing some
11 background noise. Thanks very much.

12 (Pause)

13 THE COURT: We'll try it one more time. If you're
14 on the phone, mute it please. If you have a live line,
15 especially mute it. Thank you.

16 The Court held a hearing on the motion on May 14,
17 2019. For the reasons discussed below, the motion is
18 denied. The Court has jurisdiction of the motion pursuant
19 to 28 U.S.C. Sections 1334(a) and 157(a) and the Amended
20 Standing Order of Referral of Cases of Bankruptcy Judges of
21 the United States District Court For the Southern District
22 of New York dated January 31, 2012, Preska as chief judge.
23 This matter is a core proceeding under 28 U.S.C. Section
24 157(b) (2) .

25 The facts are as follows. On February 11, 2019,

1 each of the Debtors filed a voluntary petition for relief
2 under Chapter 11 of the Bankruptcy Code in this court.
3 Since that date, the Debtors have remained in possession and
4 control of their business and assets as Debtors In
5 Possession pursuant to Sections 1107 and 1108 of the
6 Bankruptcy Code. The Debtors along with their non-debtor
7 subsidiaries, which I'll collectively refer to as "the
8 Company" operate as an independent servicer originator of
9 mortgage loans and servicer of reverse mortgage loans. See
10 the declaration of Gerald A. Lombardo pursuant to Rule 1007-
11 2 of Local Bankruptcy Rule for the Southern District of New
12 York, ECF Number 2. That's the Lombardo Rule 1007
13 declaration at Paragraph 6.

14 The company originates and purchases residential
15 loans through consumer correspondent and wholesale lending
16 channels that are predominantly sold to the Federal National
17 Mortgage Association or Fannie Mae and the Federal Home Loan
18 Mortgage Corporation, also known as Freddie Mac, and
19 government entities. Fannie Mae and Freddie Mac are
20 government-sponsored enterprises, each a GSE and
21 collectively the GSEs. It's ordered by Congress that by and
22 securitized mortgage loans originated by mortgage lenders.
23 See the Lombardo Rule 1007 declaration at Paragraph 6, 20,
24 and 25, Note 3.

25 The Company's business is comprised of three

1 primary segments, one, forward mortgage originations; two,
2 forward mortgage servicing; and three, reverse mortgage
3 servicing. That's the declaration at 24, Paragraph 24.

4 The Company's forward mortgage originations are
5 done exclusively through Debtor Ditech Financial, LLC.,
6 which I'll refer to as "Ditech." Virtually all of the loans
7 that Ditech originates are conventional conforming loans
8 eligible for securitization by GSEs. In 2018, Ditech
9 originated or purchased over \$12.6 billion in mortgage
10 loans. See the declaration at Paragraphs 25 and 27.

11 Ditech also performs mortgage service -- excuse
12 me, also performs forward mortgage loan servicing for
13 mortgage loans for which Ditech owns the mortgage servicing
14 rights and subservicing for third party owners of mortgage
15 servicing rights. See the declaration at Paragraph 38. As
16 of the year-end of 2018, Ditech serviced approximately 1.4
17 million residential loans with an unpaid principal balance
18 of \$176.1 billion. And of those, Ditech was the subservicer
19 for \$700,000 accounts with an unpaid principal balance of
20 \$104.3 billion. See the declaration at Paragraph 39.

21 Debtor Reverse Mortgage Solutions, Inc., or RMS,
22 primarily focuses on servicing and subservicing reverse
23 mortgage loans, the majority of which are home equity
24 conversion mortgages or HECMs that are insured by the
25 Federal Housing Administration. An HECM is a loan that

1 allows home owners to borrow money against the equity value
2 of their homes. See the declaration at Paragraph 40.

3 A reverse mortgage borrower typically is not
4 required to remit monthly mortgage payments but instead
5 receives cash in monthly installments, a lump sum, or a line
6 of credit up to a principal limit, which limit is calculated
7 on among other things the age of the borrower, the appraised
8 value of the borrower's home, and the loan interest rate.
9 See the declaration at Paragraph 41.

10 An HECM borrower must be age 62 or over and
11 typically relies on the proceeds of the loan -- of such loan
12 to fund their living expenses. The average age of the
13 borrowers under the HECMs in RMS's portfolio was
14 approximately 75 years of age. See the declaration at
15 Paragraph 41.

16 Reverse mortgage loan servicing accounts for
17 approximately 13 percent of the Debtors' revenue. See the
18 declaration at 40, Paragraph 42. RMS performs servicing for
19 mortgage loans that fall into two categories: one, mortgage
20 loans that RMS owns or owns the mortgage servicing rights
21 and, two, mortgage loans for which RMS performs servicing
22 and subservicing for third-party owners of the loans.
23 That's the declaration at 42. As of December 31, 2018, RMS
24 serviced or subserviced approximately 88,000 loans with an
25 unpaid principal balance of \$17.1 billion. See the

1 declaration at Paragraph 44.

2 As of the petition date and without limitation,
3 the Debtors had outstanding debt obligations in the
4 principal amount of approximately \$961.4 million relating to
5 certain terms loans. Those are the 1 L term loans. And the
6 lenders thereunder are the 1 L term lenders. The 1 L terms
7 loans are secured by a first lien basis -- on a first-lien
8 basis by substantially all of the Debtors' assets. Refer to
9 that as the 1 L collateral.

10 The Debtors also have outstanding note obligations
11 in the principal amount of \$253.9 million as of the petition
12 date relating to certain notes, refer to those as the 2 L
13 notes, which are secured on a second-lien basis on the 1 L
14 collateral. See the declaration at Paragraphs 48 to 49.

15 As of the petition date, the Debtors were
16 servicing approximately 1.5 million loans made to
17 individuals -- I'll refer to them as "the Consumer
18 Borrowers" -- and that were secured by forward and reverse
19 mortgages on their residences. The Debtors acknowledge that
20 at this time RMS is party to approximately 6,000 judicial
21 and non-judicial foreclosure proceedings and more than 600
22 eviction proceedings and that Ditech is party to 16,400
23 judicial and non-judicial foreclosure proceedings and
24 approximately 350 eviction proceedings. See documents filed
25 at ECF Numbers 9 at Paragraph 75 and Number 10 at Paragraph

1 61.

2 It's undisputed that in many of the judicial and
3 non-judicial foreclosure proceedings, the Consumer Borrowers
4 are asserting claims and defenses to foreclosure including
5 claims against RMS and Ditech. In addition, apart from the
6 foreclosure-related litigation, Consumer Borrowers have sued
7 RMS and Ditech on account of their alleged illegal and
8 fraudulent loan origination, servicing, and accounting
9 practices.

10 In very general terms, those consumer creditor
11 claims fall into two categories. One consists of claims,
12 crossclaims, third-party claims, and counterclaims that do
13 not result in any ordered judgment, verdict, decree, or
14 arbitration award of monetary damages including without
15 limitation attorney's fees or costs, penalties, or fines
16 including statutory penalties and fines against the Debtors
17 but that are necessary to resolve, one, a claim or defense
18 involving the amount, validity, priority of liens with
19 respect to the property subject to the mortgages; two, a
20 claim or defense that is subject to Section 363(o) of the
21 Bankruptcy Code; three, alleged servicing errors involving
22 the misapplication or payment or miscalculation of amounts
23 due and owing; or four, a claim or defense brought by a
24 consumer borrower on account of the Debtors' alleged pre-
25 petition failure to, among other things, comply with the

1 loan modification obligations and the improper assignment of
2 deeds of trust.

3 I'll refer to those types of claims as non-
4 monetary claims. The other type of claims asserted by
5 Consumer Borrowers against the Debtors in the foreclosure
6 actions and otherwise consist of claims, crossclaims, third-
7 party claims, and counter claims that result in orders,
8 judgments, verdicts, decrees, or arbitration awards of money
9 damages including attorney's fees, costs, and statutory and
10 non-statutory penalties and fines. I'll refer to those
11 claims as monetary damage claims.

12 As of the petition date, the Debtors were party to
13 thousands of actions involving Consumer Borrowers, asserting
14 consumer creditor claims which include non-monetary claims
15 and/or money damages claims against the Debtors. The
16 Debtors explain that in recent years, their business has
17 been impacted by significant operational challenges and
18 industry trends that have severely constrained their
19 liquidity and ability to implement needed operational
20 initiatives.

21 To address the burden of its over-leveraged
22 capital structure, Walter Investment Management Company,
23 which is now known as Ditech Holding Corp. which is the
24 Debtor herein, consummated a fully-consensual pre-packaged
25 Chapter 11 plan on February 8, 2018. See the Lombardo

1 declaration at Paragraph 7. However, even as of the
2 effective date of Walter's Chapter 11 plan, the company was
3 facing significant liquidity and operational headwinds, and
4 the company's new senior management team determined that
5 additional relief was needed.

6 In June 2018, the company began a formal review of
7 strategic alternatives including a potential merger or sale
8 of all or substantially all of the assets of the company.
9 I'll refer to that as the pre-petition marketing process.
10 The company, however, has not been able to consummate an
11 out-of-court transaction with a third-party purchaser. See
12 the Lombardo declaration at Paragraph 69.

13 By May 2019, the company turned its focus toward
14 planning for an in-court recapitalization transaction that
15 would maximize value for its creditors and preserve the
16 enterprise as a going concern. See the declaration at
17 Paragraph 8. To that end, in December of 2018, the company
18 began in earnest negotiating with groups of holders of its
19 corporate debt on an acceptable recapitalization structure
20 culminating in a restructuring support agreement with the Ad
21 Hoc Group of Term Lenders, which I'll refer to as "the Ad
22 Hoc Term Loan Group" holding in the aggregate approximately
23 \$736.6 million of the 1 L term loans. I'll refer to that
24 agreement as "the Restructuring Support Agreement" or the
25 RSA.

1 Among other things in the RSA, the Debtors agreed
2 to commence these Chapter 11 cases and to propose a joint
3 reorganization plan that provides for a transaction -- refer
4 to that as "the Reorganization Transaction" -- pursuant to
5 which the Debtors would equitize a portion of the 1 L term
6 loans and extinguish certain other debt. In pertinent part,
7 the Reorganization Transaction calls for a debt-to-equity
8 swap of 1 L term loans which would lead the 1 L term lenders
9 with 100 percent of the equity of the reorganization company
10 and \$400 million of first lien debt; an unspecified
11 distribution in cash to holders of so-called go-forward
12 trade claims, that is trade creditors that the company
13 identified with the consent of 1 L term lenders as being
14 integral to the reorganized company; and the extinguishment
15 of the 2 L notes and all remaining general unsecured claims
16 including all consumer borrower claims for no consideration.
17 See the declaration at Paragraph 9.

18 The RSA also provides that as a toggle to the
19 Reorganization Transaction, the Debtors would continue the
20 pre-petition marketing process to pursue a sale of all or
21 substantially all of their assets with the sale proceeds
22 being distributed to creditors, which we'll refer to as the
23 sale transaction, and alternatively, a smaller asset
24 transaction that could complement a Reorganization
25 Transaction.

1 In the event of a sale after payment of
2 administrative claims, priority claims, and satisfaction of
3 certain unimpaired -- excuse me, certain unimpaired secured
4 claims, the proceeds would be distributed pursuant to a
5 waterfall as follows: first to the holders of 1 L term
6 loans, second to the holders of 2 L notes, and third to the
7 holders of general unsecured claims including the claims of
8 the consumer borrowers and go-forward trade claims.

9 The toggle decision of whether to effectuate a
10 Reorganization Transaction or sale transaction would be at
11 the election of a super majority that is 66 and two-third
12 percent of the 1 L term lenders. On March 5, 2019, the
13 Debtors filed a joint plan of reorganization and a
14 disclosure statement in support of it. The plan was
15 faithful to the RSA with certain exceptions not relevant
16 here and proposed a toggle Chapter 11 plan. In the
17 disclosure statement, the Debtors projected that in a sale
18 transaction, unsecured creditors including Consumer
19 Borrowers would receive no distribution on account of their
20 claims and that those claims would be discharged in
21 bankruptcy.

22 On February 27, 2019, the U.S. Trustee appointed
23 the Creditors Committee. At that time, it consisted of
24 seven members comprised of two trade creditors, two general
25 unsecured creditors, the indentured trustee for the 2 L

1 notes and the indenture trustee for certain RMBS trusts, and
2 one Consumer Borrower holding a liquidated litigation claim.
3 Promptly thereafter, the Creditors Committee retained
4 bankruptcy and specialty industry counsel and financial
5 advisors.

6 The Committee's bankruptcy counsel explained that
7 its mandate from the Committee from the outset of its
8 retention has been to work with the Debtors and 1 L lenders
9 towards maximizing the recovery for general unsecured
10 creditors under the plan noting that, as filed, the plan
11 provided for no distribution on account of those claims.

12 In line with that mandate, on April 4, 2019, the
13 Creditors Committee filed an objection to the disclosure
14 statement. The Committee objected to the adequacy of the
15 information contained in the disclosure statement and the
16 solicitation and voting procedures. It also contended that
17 the disclosure statement should not be approved because the
18 plan was patently unconfirmable. Among other things, the
19 Creditors Committee argued that the plan violated the best
20 interest of creditors test, the absolute priority rule, and
21 unfairly discriminated between go-forward trade creditors
22 and general unsecured creditors.

23 The Committee also argued that any sale
24 contemplated by the plan must incorporate Section 363(o) of
25 the Bankruptcy Code. That section provides that

1 notwithstanding (f) if a person purchases any interest in a
2 consumer credit transaction that is subject to the Truth In
3 Lending Act or any interest in a consumer creditor contract
4 as defined in Section 433.1 of Title 16 of the Code of
5 Federal Regulations January 1, 2004 as amended from time to
6 time, and if such interest is purchased through a sale under
7 this section, then such person shall remain subject to all
8 claims and defenses that are related to such consumer
9 creditor transaction or such consumer creditor contract to
10 the same extent as such person would be subject to such
11 claims and defenses of the consumer had such interest been
12 purchased at a sale not under this section. See 11 U.S.C.
13 Section 363(o).

14 Without limitation, the Debtors contend that any
15 sale that will be effectuated through the plan that the --
16 excuse me. Without limitation, the Debtors contend that any
17 sale of the assets in this case will be effectuated through
18 a plan and, therefore, will not implicate Section 363(o).
19 The U.S. Trustee objected to the disclosure statement.
20 Without limitation, it asserted that the provisions in
21 Section 363(o) are -- or excuse me, are applicable both in a
22 sale and reorganization transaction. Various consumer
23 borrowers also objected to the disclosure statement.

24 On or about April 26, 2019, the Debtors filed a
25 revised plan and disclosure statement. As relevant here,

1 the second amended plan added a creditor class of borrower
2 nondischarged claims. In essence, that class consists of
3 consumer borrowers holding non-monetary claims. Under that
4 plan in a reorganization transaction, the holders of
5 borrower non-discharged claims receive no distribution on
6 account of their claims but those claims are accepted from
7 discharge. Thus, in such a transaction, the borrower non-
8 discharged claims would patch through the plan and be
9 enforceable against the reorganized debtor.

10 The balance of the consumer creditor claims
11 including the money damage claims would be classified with
12 general unsecured claims and be discharged in bankruptcy.
13 In the event of a sale transaction, the plan calls for the
14 borrower nondischarged claims to be treated as general
15 unsecured claims and paid through a claims waterfall and
16 discharged in bankruptcy. As with the initial plan, the
17 Debtors projected that under a sale transaction, unsecured
18 creditors will receive no distribution on account of their
19 claims.

20 On April 26th, the Debtors filed an application to
21 further extend the bar date solely for consumer creditors.
22 That application was filed partly in response to "numerous
23 inquiries from consumer borrowers unfamiliar with the
24 Chapter 11 process regarding filing proofs of claim." The
25 Debtors recognize that "such consumer borrowers are

1 typically not sophisticated and are not represented by
2 counsel." The Court granted the application.

3 After they appointed a Creditors Committee, the
4 U.S. Trustee received several letters from various
5 representatives of Consumer Borrowers requesting the
6 appointment of a Consumer Creditors Committee. The first
7 such letter is dated April 8, 2019, and was sent by Thad
8 Bartholow on behalf of certain individual Consumer
9 Borrowers. As the April letter indicates, Mr. Bartholow's
10 request for the appointment of an additional committee was
11 supported by eleven counsel representing a number of
12 Consumer Borrowers. And a number of those counsel were
13 acting on behalf of various pro bono organizations as, for
14 example, the National Consumer Law Center and the Legal
15 Assistance Foundation.

16 That letter was followed by two letters from the
17 Connecticut Fair Housing Center dated April 12th, 2019.
18 Victor Noskov of the Quinn Emanuel Law Firm which is the
19 proposed counsel to the Consumer Creditors Committee
20 authored one of those letters as pro bono counsel for the
21 Connecticut Fair Housing Center and certain individual
22 reverse mortgage borrowers.

23 Atlanta Legal Aid sent a letter to the U.S.
24 Trustee dated April 5, 2010, and J. Samuel Tenenbaum at the
25 Northwestern University School of Law Investor Protection

1 Center sent a letter to the U.S. Trustee dated April 19,
2 2019. All of those letters requested the appointment of a
3 Consumer Creditors Committee for the benefit of their
4 clients.

5 The issues raised in Mr. Bartholow's letter are
6 representative of those raised by the other creditors in
7 support of their requests for the appointment of a Consumer
8 Creditors Committee. In part, that letter states as
9 follows:

10 "We are submitting this request to you because our
11 consumer creditor constituents, none of whom chose
12 to do business with the Debtors, are the most
13 vulnerable and have the least financial liens
14 available to them of all the Debtors' creditors.
15 Moreover, the Debtors' plan provisions threaten
16 substantial harm to our constituents insofar as
17 the Debtors seek to use their plan discharge
18 and/or eliminate consumer creditors' challenges to
19 illegally assessed charges Debtors added to
20 consumer accounts and other improper loan
21 servicing and accounting practices which have
22 caused consumer creditors' accounts to be
23 overstated and inaccurate.

24 "It's our understanding that the Debtors' illegal
25 accounting practices have already caused some

1 consumer creditors to lose their homes. If Ditech
2 succeeds in confirming a plan that leaves consumer
3 creditors without any meaningful and enforceable
4 remedies, this bankruptcy will cause yet more
5 consumer borrowers to unfairly and unlawfully be
6 deprived of their homes. Debtors' improper loan
7 servicing and accounting practices also cause
8 significant harm to the consumer borrowers' credit
9 which harm will be all but impossible to prevent
10 if consumers' statutory enforcement rights under
11 the Fair Credit Reporting Act are eliminated by
12 plan confirmation and/or discharge in this case.
13 "Perhaps, most perversely, Debtors' efforts to
14 collect these illegal amounts violates the
15 borrowers' discharge injunctions entered by
16 bankruptcy courts around the nation in borrowers'
17 Chapter 13 cases. As this Court is well aware,
18 Chapter 13 debtors work hard making bankruptcy
19 payments up to five years before they earn their
20 Chapter 13 discharges.
21 "By contrast, in this Chapter 11 case, Debtors are
22 attempting to obtain a discharge injunction in a
23 matter of months that would immunize them and
24 their successors in interest, pardon me, for past
25 and future violations of their consumer borrowers'

1 prior discharge injunctions.

2 "Further, violations of the borrowers' discharge
3 injunctions will inevitably result as a result of
4 the amended plan and its pre-petition disclosure
5 statement are conspicuously devoid of any proposal
6 that would address Debtors' improper pre-petition
7 loan servicing and accounting practices.

8 "Establishing an official Consumer Creditors
9 Committee for this case and/or making substantial
10 changes to the composition of the membership of
11 the Official Unsecured Creditors Committee in this
12 case is, therefore, critical not just to protect
13 the Consumer Creditors' interest but also to
14 educate the Court and all legitimate creditors
15 regarding Debtors' servicing and accounting
16 practices. In order to properly assess the value
17 of the Debtors' assets, the stakeholders need to
18 determine the effect of the Debtors' improper
19 servicing and accounting practices on the Debtors'
20 financials in the extent that Debtors'/Defendants'
21 servicing portfolios are infested with improper
22 charges and fees that are not factored into the
23 official -- into the financial disclosures by the
24 Debtor in this case."

25 That's the Bartholow letter at Pages 2 to 3.

1 In response to those letters, on April 22nd, 2009,
2 the U.S. Trustee appointed two additional unsecured
3 creditors who are consumer borrowers with liquidated
4 consumer creditor claims against the Debtors to serve as
5 members of the Creditors Committee. Beginning promptly
6 after the retention, the Committee -- Creditor Committee's
7 professionals engaged the Debtors and the Ad Hoc Term Loan
8 Group in negotiations regarding modifications to the plan
9 that would yield a return for the benefit of unsecured
10 creditors and in doing so, resolve the Creditors'
11 Committee's objections to the Debtors' plan and disclosure
12 statement.

13 Under the careful watch of the members of the
14 Creditors Committee, the professionals reached a settlement
15 which we refer to as the "Committee Settlement" with the
16 Debtors and 1 L term lenders. In broad strokes, the
17 settlement provides that the Creditors Committee will
18 support a plan incorporating the following terms, one, there
19 would be a de facto substantive consolidation of the
20 Debtors' estate solely for the purposes of creating a
21 creditor trust for the benefit of unsecured creditors --
22 I'll refer to that as the "GUC," G-U-C, "Recovery Trust" --
23 that will make distributions to general unsecured creditors
24 and pursue non-release causes of action contributed to the
25 trust by the Debtors. The proceeds of such causes of action

1 will be split 50/50 between general unsecured creditors and
2 1 L term lenders.

3 The GUC Recovery Trust assets will be -- will also
4 include \$4 million less certain fees to be paid to the
5 Creditors Committee advisors and certain other fees and
6 expenses to be paid to the 2 L notes, the Trustee, and the
7 RMBS Trustee as those terms are defined in the plan. And
8 1.5 percent of any net cash proceeds, as that term is
9 defined in the plan, distributed to 1 L term lenders after a
10 70 percent recovery for the term lenders in the event of a
11 sale transaction -- we'll refer to that as the "Contributed
12 Sale Proceeds" -- 1.5 million and the pro rata share of the
13 contributed proceeds for the 2 L notes and the elimination
14 of the go-forward trade class from the plan. This
15 description, of course, is qualified entirely by what is set
16 forth in the agreement and in the amended disclosure
17 statement.

18 Thus, the Creditors Committee succeeded in
19 obtaining the promise of a distribution on account of the
20 claims of general unsecured creditors, including the
21 consumer creditor claims in the face as I noted earlier of a
22 plan that is originally filed provided for no distribution
23 on account of those claims.

24 Under the Committee settlement, the nondischarged
25 borrower claims are unimpaired and not discharged in a

1 reorganization transaction but will be treated as general
2 unsecured claims in a sale transaction. The Committee
3 settlement does not mandate that the plan include language
4 incorporating the effects of Section 363(o) of the
5 Bankruptcy Code or otherwise provide any additional relief
6 to consumer borrowers.

7 The Committee had vetted the proposed settlement
8 and was scheduled to vote on whether to support it when the
9 U.S. Trustee appointed the two new consumer borrower members
10 to the Creditors Committee. The Committee delayed the vote
11 on the Committee settlement for approximately one week to
12 accommodate the new borrower members. During that time, the
13 Committee attempted to renegotiate the settlement to reflect
14 the interests of the Creditors Committee new membership, but
15 those efforts were unsuccessful.

16 In an email letter to the, excuse me, email letter
17 to the United States Trustee dated April 29, 2019, counsel
18 to the Creditors Committee explained that after the
19 appointment of the two consumer members, the Committee added
20 Section 363(o) as a new condition to the near final
21 settlement but that the proposal was rejected by the 1 L --
22 by the first lien lenders and the Debtors despite pushback
23 from the Committee.

24 Counsel further explained that the Creditors
25 Committee ultimately decided to give up on the Section

1 363(o) issue because it was focused on attempting to
2 maximize the cash recovery for all unsecured creditors
3 rather than focusing on one sector of the unsecured creditor
4 body. It observed that the Section 363(o) issue was murky
5 and that rather than pressing the point with the Debtors and
6 the 1 L term lenders, the Creditor's Committee could leave
7 the issue with counsel to the consumer creditors to take up
8 at confirmation.

9 Counsel noted that although the Creditors
10 Committee ultimately decided to drop the request for relief
11 related to Section 363(o) from the Committee settlement, it
12 agreed at the behest of its two new consumer borrower
13 members to vote on whether to either support, not oppose, or
14 oppose the creation of a separate consumer creditor
15 committee. Committee counsel reported that the vote was
16 unanimous to not oppose the creation of a consumer creditor
17 committee.

18 After the U.S. Trustee appointed the new members
19 to the Creditors Committee, the Scranton Consumers filed a
20 letter dated April 23, 2019 requesting the formation of a
21 separate committee of consumer creditors. In their letter,
22 the Scranton Consumers maintain that the existing Official
23 Committee of Unsecured Creditors even with the new
24 additional consumer borrower members could not adequately
25 represent Consumer Borrowers' interests. Following the

1 second request, the Debtors sent via email a letter date May
2 1, 2019 to the U.S. Trustee arguing that the appointment of
3 a separate committee -- against the appointment of a
4 separate Committee of Unsecured Creditors.

5 The Debtors argued among other things that the
6 Consumer Creditors' interests are already adequately
7 represented by the Creditors Committee, particularly in
8 light of the additional Consumer Creditors added to that
9 Committee. The Consumer Creditors have been actively
10 participating in the Debtors' Chapter 11 cases since the
11 petition date and in many cases through represented counsel
12 -- have been doing so through represented counsel.

13 They also argued that the factors set forth in
14 this Court's decision in Residential Capital weigh against
15 the formation of a separate consumer creditors committee and
16 that the cost of the Official Consumer Creditors Committee
17 particularly at this late stage in the Chapter 11 cases
18 could not be justified.

19 On May 2nd, 2019, the U.S. Trustee appointed the
20 Official Committee of Consumer Creditors which consists of
21 five individuals holding consumer creditor claims. The
22 Consumer Creditors -- Consumer Committee's mandate is
23 narrow. Proposed counsel to the Consumer Creditors
24 Committee explained that the Committee will focus on, A,
25 analyzing the Debtors' sale process to understand what

1 assets are being sold, how consumer mortgages are being
2 packaged as part of the plan, what analysis has been done on
3 account of consumer claims as part of the sale process, and
4 ultimately what the sale will mean for consumer rights; and
5 B, ensuring that the legal rights of consumers are being
6 respected under the plan including the consumers' rights
7 under Section 363(o) and the rights of setoff, recoupment,
8 and defenses.

9 Counsel also advised that the Committee might --
10 will review and may ask the Court to reconsider the order
11 that the Court entered in connection with the ordinary
12 course of business procedures in the case as it relates to
13 the effect on impact of the automatic stay.

14 On May 8, 2019, the Debtors filed a third amended
15 plan which incorporated the Committee settlement and a
16 disclosure statement. Prior to the hearing on the third
17 amended disclosure statement, proposed counsel to the
18 Consumer Creditors Committee and the Debtors were able to
19 discuss the Consumer Creditors Committee's concerns with the
20 plan and disclosure statement. Ultimately, the Debtors and
21 Consumer Creditors Committee agreed that the hearing could
22 go forward without objection on the part of the Consumer
23 Creditors Committee because the Debtors agreed to add a new
24 section in the disclosure statement which discusses the
25 Consumer Creditors Committee's position regarding the

1 proposed treatment of consumer claims under the Debtors'
2 plan.

3 The Consumer Creditors Committee has raised
4 various issues with the headline of their position is that
5 the proposed plan cannot be confirmed unless claims held by
6 consumer borrowers in connection with their mortgages both
7 against any of the Debtors and non-debtor third parties are
8 fully preserved that may be brought against any purchaser of
9 the Debtors' assets. With their comments incorporated, the
10 Consumer Creditors Committee did not object to the approval
11 of the disclosure statement. And on May 4th after a hearing
12 on that, the Court approved the disclosure statement and the
13 procedures -- the solicitation procedures with regard to the
14 plan.

15 We'll now turn our attention to the discussion of
16 the legal principles applicable to this motion. Section
17 1102 of the Bankruptcy Code governs the appointment of
18 statutory committees in Chapter 11 cases. In part, it
19 authorizes the United States Trustee to appoint a committee
20 of creditors holding unsecured claims and additional
21 committees of creditors or of equity security holders as the
22 United States Trustee deems appropriate. See 11 U.S.C.
23 Section 1102(a)(1).

24 It also provides that on the request of a party in
25 interest, the Court may order the appointment of additional

1 committees of creditors or of equity security holders if
2 necessary to assure adequate representation of creditors or
3 of equity security holders. See 1102(a)(2).

4 However, it does not address whether the Court is
5 empowered to disband a committee appointed by the U.S.
6 Trustee pursuant to Section 1102(a)(1). The Debtors argue
7 that pursuant to Sections 1102 and 105 of the Bankruptcy
8 Code, a court may disband a committee where, one, the
9 committee is not necessary to protect the interests of its
10 constituency; two, the administrative expense of the
11 committee is not justified; and three, the presence of the
12 committee is counter productive to the process of the case.
13 See the motion in Paragraph 15.

14 The U.S. Trustee and the Consumer Creditors
15 Committee contend that the Court has no authority to
16 dissolve a committee that has been constituted by the U.S.
17 Trustee. In support, the U.S. Trustee asserts that Section
18 1102 of the Bankruptcy Code delineates specific but
19 different powers for the Court and the U.S. Trustee and
20 Committee members -- in Committee matters and that such
21 language reflects Congress's desire to separate the judicial
22 and administrative functions between the two. See the
23 Trustee's opposition at Pages 8 to 9.

24 Further, the U.S. Trustee contends that Section
25 105(a) is not a separate source of the Court's authority

1 where Section 1102 provides none. And in any event, the
2 Debtors' construction of Sections 1102 and 105 runs afoul of
3 the Supreme Court's decision in *Law vs. Siegel*, 571 U.S. 415
4 (2014). Courts have considered whether a bankruptcy court
5 is empowered to disband a committee appointed by the U.S.
6 Trustee pursuant to Section 1102(a)(1) of the Bankruptcy
7 Code have reached different conclusions.

8 In *In re Caesars Entertaining Operating Corp.*,
9 Inc., 526 B.R. 265-268 (Bankr. N.D.Ill. 2015), the
10 bankruptcy court held that under the explicit statutory
11 language, "Nothing in Section 1102(a) confers on the court
12 the power to disband a committee that the U.S. Trustee has
13 appointed under Section 1102(a)(1)." There, the U.S.
14 Trustee appointed an official committee of second priority
15 noteholders in addition to the official committee of general
16 unsecured creditors.

17 The debtor, Caesars, moved to disband the
18 noteholder's committee arguing that, one, an inter-creditor
19 agreement to which each noteholder committee members is a
20 party prevented the noteholder committees from performing
21 many of the statutory functions; two, the noteholders are
22 sophisticated business entities who do not need a committee
23 to represent their interests; and three, a second committee
24 would increase administrative costs with no corresponding
25 benefit to the estate. The U.S. Trustee and the noteholders

1 committee and the Official Committee of -- and the creditors
2 committee opposed the motion. See 526 B.R. at 267 of 268.

3 The court denied the motion finding that it had no
4 authority under Section 1102(a) to disband the noteholders
5 committee. The court -- in doing so, the court applied the
6 statutory construction rule of "expressio unius est exclusio
7 alterius" or the expression of one thing is the exclusion of
8 another and reasoned that Section 1102 was explicit in
9 enumerating the different powers of the bankruptcy court and
10 the U.S. Trustee as to the constitution of statutory
11 committees and the ability to dissolve a constituted
12 statutory committee was not one of the court's enumerated
13 powers. See 536 B.R. at 268 to 269.

14 The court also rejected Caesars argument that the
15 authority to disband a statutory committee constituted by
16 the U.S. Trustee lies within Section 105(a). That section
17 states in part that "the court may issue any order, process,
18 or judgement that is necessary or appropriate to carry out
19 the provisions of this title." 11 U.S.C. Section 105(a).

20 The court -- the bankruptcy court explained that
21 Section 105(a) gives the bankruptcy courts "the power only
22 to implement existing code provisions" and, thus, -- and is,
23 thus, "not a vehicle for reading into Section 1102(a)(1) a
24 power to do away with statutory committees. And Section
25 1102(a)(1) itself grants no such power and especially when

1 Section 1102(a) grants other powers but not this one."

2 That's 526 B.R. at 269.

3 In doing so, the Caesars court noted the Supreme
4 Court's view of the limits of Section 105 as set forth in
5 Law vs. Siegel. There, the Supreme Court rejected the
6 contention that by application of Section 105(a), a
7 bankruptcy court can equitably surcharge an individual
8 debtor's assets that are exempt from property of the estate
9 under Section 522 of the Bankruptcy Code for administrative
10 expenses in this case. In doing so, the Supreme Court noted
11 that "its hornbook law that Section 105 does not allow
12 bankruptcy courts to override explicit mandates of other
13 sections of the Bankruptcy Code." 571 U.S. at 421.

14 The Supreme Court explained that the bankruptcy
15 court's surcharge contravenes Section 522 of the Bankruptcy
16 Code which entitled the Debtor to exempt \$75,000 of equity
17 in his home and that exempted amount is not liable for the
18 payment of any administrative expenses of the estate. The
19 Supreme Court went on to note that Section 522 is explicit
20 in enumerating the criteria and limits for exemptions and
21 "even assuming the bankruptcy court could have revisited the
22 debtor's entitlement to exemptions, Section 522 does not
23 give the court discretion to grant or withhold exemptions
24 based on whatever considerations the deem appropriate." 571
25 U.S. at 424.

1 Other cases have questioned the bankruptcy court's
2 power to disband an official committee appointed by the U.S.
3 Trustee under Section 1102(a). See, for example, In Re New
4 Life Fellowship, 202 B.R. 994 at 995 (Bankr. W.D.Okla.)
5 where the court stated that "both the specific language in
6 the legislative history of Section 1102(a)(1) compel the
7 conclusion that the court is without power to abolish there
8 it was a bondholders committee" and denying the motion
9 because it lacked authority to grant relief. See also In Re
10 Dewey and LeBoeuf, LLP, Number 12-12321, 2012 WL 5985325*3
11 (Bankr. S.D.N.Y. November 29, 2012) where the court noted
12 that Section 1102 is silent whether the court has power to
13 disband an additional committee after that committee has
14 been appointed and noting that the answer as to whether or
15 not it can be done is not so clear.

16 However, in In Re Pacific Avenue, 467 B.R. 868
17 (Bankr. W.D.N.C. 2012), the court reached the opposite
18 conclusion in granting the motion filed by a Chapter 11
19 trustee to abolish the official committee of general
20 unsecured creditors. The court found that although there
21 was no specific provision in Section 1102 for disbanding a
22 creditors committee, Section 105(d) gave it authority to do
23 so in light of the particular facts and circumstances of
24 that case. That's 467 B.R. at 870.

25 Section 105(d) authorizes a bankruptcy court to

1 hold status conferences in bankruptcy cases "to further the
2 expeditious and economic resolution of a case." And
3 pursuant to Section 105(d)(2), the bankruptcy court "may
4 issue an order at any such conference prescribing such
5 limitations and conditions as the court deems appropriate to
6 ensure that the case is handled expeditiously and
7 economically." See 11 U.S.C. Sections 105(d).

8 The court found that the following factors
9 supported its determination to disband the creditors
10 committee. One, the committee itself did not have a stake
11 in the case but only acted as a representative for other
12 stakeholders and, thus, where a Chapter 11 trustee was
13 appointed, he took over the fiduciary duties of representing
14 the unsecured creditors in lieu of a committee; two, the
15 committee's efforts at protecting the creditor's interests
16 are duplicative and necessary; three, while the appointment
17 of a Chapter -- with the appointment of a Chapter 11
18 trustee, the debtor's plan effectively a liquidating plan,
19 the bankruptcy is akin to a Chapter 7 where there are no
20 creditors committee; four, the only economically
21 disinterested party which was a bankruptcy administrator
22 supported disbanding the committee; five, the committee's
23 counsel is an administrative burden at the expense of the
24 cash collateral of the secured creditor and could not be
25 justified; and six, the efforts of the committee had not

1 been effective in that the progress of the case had
2 deteriorated in large part due to the actions of the
3 committee including, for example, the committee's redundant
4 discovery requests.

5 The Debtors rely on Pacific Avenue in support of
6 the motion. The Debtors also cite to In Re City of Detroit,
7 Michigan, 519 B.R. 673 (Bankr. E.D.Mich. 2014) and In Re
8 Delphi Corporation, Case Number 0544481 (Bankr. S.D.N.Y.
9 April 23, 2019) as support for the authority to disband the
10 consumer creditors committee. The Debtors rely on these
11 cases is misplaced.

12 In In Re City of Detroit, Michigan, as the case
13 commenced under Chapter 9 and, thus, the court's authority
14 concerning the appointment of a statutory committee by the
15 U.S. Trustee in Chapter 11 cases pursuant to Section 1102
16 was not implicated. See 519 B.R. at 677 where the court
17 concluded that Section 1102(a)(1) was not applicable in the
18 Chapter 9 case.

19 In In Re Delphi Corporation, the equity committee
20 that the debtor sought to dissolve was appointed by the U.S.
21 -- was not appointed by the U.S. Trustee but was appointed
22 by the bankruptcy court under a motion by an equity holder
23 pursuant to Section 1102(a)(2). Thus, there was never a
24 question concerning the authority of the bankruptcy court to
25 disband the committee formed by the U.S. Trustee. Moreover,

1 the bankruptcy court's order directing the appointment of an
2 equity committee specifically reserved that court's
3 authority to disband the equity committee upon a change of
4 circumstances.

5 The Court also finds that the Debtors' reliance on
6 Pacific Avenue is misplaced as well. One, the facts in this
7 case and in Pacific Avenue are significantly different as
8 there has not been an appointment of a Chapter 11 Trustee
9 here. There's no question that the -- and what that case
10 was seeking to do was to disband -- and there was no --
11 excuse me, there was no question that the Committee that
12 they were seeking to disband in that case had been
13 ineffectual and that is not the case. There's no evidence
14 to that effect here.

15 Moreover, the Pacific Avenue court's reliance on
16 Section 105(d) of the Bankruptcy Code as a statutory
17 authority to disband the committee may be questioned given
18 the recent holding in Law vs. Siegel, 571 U.S. 415. In any
19 event, the Court finds that that case is distinguishable and
20 is not -- and is certainly of questionable authority.

21 In the end of the day, though, the Court does not
22 have to determine whether it has the authority to direct the
23 disbandment of the consumer creditors committee because even
24 assuming arguendo that it has such authority, the court
25 denies the motion and concludes that the consumer creditors

1 committee should not be disbanded for the reasons discussed
2 below. As an initial matter, the Debtors argue that when
3 considering whether to overturn the U.S. Trustee's decision
4 to appoint the Consumer Creditors Committee and order its
5 disbandment, the Court should apply a de novo standard of
6 review. The U.S. Trustee and Consumer Creditors Committee
7 disagree. They contend that if at all, the Court should
8 review the U.S. Trustee's appointment of the Consumer
9 Creditors Committee under the arbitrary and capricious
10 standard.

11 Hereto, the Court need not resolve the parties'
12 different contentions as to the standard of review
13 applicable to the U.S. Trustee's appointment of the Consumer
14 Creditors Committee. As the movants, the Debtors have the
15 burden of demonstrating grounds for disbanding the Consumer
16 Creditors Committee. See *In Re Dewey and LeBoeuf, LLP*, 2002
17 WL 5985325*5 where the court noted that the burden should be
18 no less rigorous to disband an additional committee
19 appointed by the U.S.T. and the moving party -- has the
20 moving party demonstrated that existing committee is not
21 necessary to assure the adequate representation.

22 As explained below, the Debtors have failed to
23 carry their burden under either standard of review. A
24 decision is arbitrary and capricious if it is "based on an
25 erroneous conclusion of law, a record devoid of evidence on

1 which the decisionmaker could rationally have based its
2 decision or as otherwise patent and unreasonable, arbitrary,
3 or fanciful." In Re Barneys, 8197 B.R. 431-439 (Bankr.
4 S.D.N.Y. 1996) citing Heat and Controlling vs. Hester
5 Industries, Inc., 785 F.2nd 1017 at 1022 (Fed.Cir. 1986).

6 In meeting this high standard, the Debtors must
7 present substantial evidence that the U.S. Trustee acted
8 arbitrarily and capriciously. That's Barneys 197 B.R. at
9 439. The evidence in the record of these cases shows that
10 the U.S. Trustee engaged in a thoughtful and deliberative
11 process in deciding to constitute the Consumer Creditors
12 Committee. Prior to the appointment of that committee, the
13 U.S. Trustee received and reviewed at least eight letters
14 requesting the appointment of a committee, two of which
15 requests were filed on the electronic docket in this case.

16 Before deciding to form the Consumer Committee,
17 the U.S. Trustee not only considered the views expressed by
18 the Consumer Borrowers in these letters but also considered
19 the Debtors' response letter in opposition to such
20 formation. Second, the U.S. Trustee did not reflexively
21 appoint the Consumers Committee based solely on his review
22 of the correspondence. He took other steps to address the
23 Consumer Borrower concerns and issues before appointing a
24 separate committee, namely he requested that the Debtors
25 seek to extend the bar date for Consumer Borrowers to file

1 proofs of claims to address issues of notice and confusion
2 by Consumer Borrowers.

3 Two, he added two more Consumer Borrowers to the
4 Creditors Committee. And, three, he raised issues as to the
5 application of Section 3630 to the sale -- to the
6 transactions proposed under the plan. It was also only
7 after further deliberations and input from members of the
8 Creditors Committee and the Creditors Committee counsel as
9 to the formation of a separation committee that he decided
10 to empanel the Consumer Creditors Committee.

11 The Debtors bear the burden of demonstrating that
12 the U.S. Trustee acted arbitrarily and capriciously in
13 appointing the Consumers Committee. Now, the Debtors have
14 not presented any evidence, let alone substantial evidence
15 to that effect. At the May 14 hearing on the motion, the
16 Debtors conceded that they're not really contending that the
17 U.S. Trustee had acted inappropriately or was without
18 authority or discretion in appointing the Consumer Creditors
19 Committee. Rather, they were questioning the timing of the
20 U.S. Trustee's decision given the posture of these cases, to
21 wit, that the debtors, lenders, creditors committee had been
22 on the brink of and in fact did reach the committee
23 settlement that would move the bankruptcy proceedings
24 towards confirmation expeditiously when the Consumer
25 Creditors Committee was appointed.

1 Without more, the timing of the appointment of
2 that committee is not grounds to upset the appointment.
3 It's not disputed that at the outset of these cases, the
4 U.S. Trustee had in fact considered the need for the
5 appointment of a consumers committee, but at least initially
6 lacked the information in the possession of the Debtors as
7 to the identities and contacts of the Consumer Borrowers to
8 solicit their interest in participating a statutory
9 committee member.

10 Moreover, the Debtors had been aware of the
11 requests by Consumer Borrowers for committee representation
12 and have always been aware of the possibility of an
13 additional committee.

14 Further, to the extent that the timeline in these
15 cases has been truncated, that's been at the request of the
16 Debtors and their lenders. All the parties in interest in
17 this case, the creditors committee, the consumer creditors,
18 the consumer borrowers, the U.S. Trustee, and now the
19 Consumer Creditors Committee have acted in good faith in
20 keeping pace with the progress of these Chapter 11 cases.

21 The Court finds that in light of the actions taken
22 by the U.S. Trustee and the deliberative process that he
23 employed in reaching his decision to appoint the Consumers
24 Committee, U.S. Trustee did not act arbitrarily or
25 capriciously in doing so. See, for example, In Re J&L

1 Funding Corp., 438 B.R. 356 at 363 (Bankr. E.D.N.Y. 2010).

2 The Court will now consider the de novo review
3 standard. Under that standard, no deference is given to the
4 determination by the U.S. Trustee to constitute the Consumer
5 Creditors Committee. In making an independent determination
6 of whether a separate committee should be constituted, the
7 Court will consider the following factors and circumstances
8 in these cases: one, the nature of the Chapter 11 cases;
9 two, the desires of the various constituencies; three, the
10 ability of the Consumer Borrowers to participate in these
11 cases if a separate committee is not appointed; four, the
12 adequate representation of Consumer Borrowers' interests by
13 the existing creditors committee in the tasks that the
14 Consumer Creditors Committee is being asked to perform.

15 These factors have been considered by courts in
16 other contexts in determining whether a separate committee
17 should be constituted or disbanded. See, for example, In Re
18 Dana, 344 B.R. 35 at 38 (Bankr. S.D.N.Y.) and In Re Pacific
19 Avenue, LLC, 467 B.R. at 870. The Court finds these factors
20 to be helpful guidance in its analysis.

21 First, the Consumer Borrowers comprise of the
22 majority in number and in value of the Debtors' unsecured
23 creditors. Moreover, the Debtors have acknowledged that the
24 record -- acknowledged on the record at various hearings
25 before the Court that the Company in both its forward

1 mortgage business and reverse mortgage business services
2 more than 1.5 million consumer mortgage accounts and that
3 the Consumer Borrowers are the life blood of the Company's
4 business.

5 Second, the formation of the Consumer Creditors
6 Committee is not opposed by the Creditors Committee. The
7 appointment of the Consumer Creditors Committee as a
8 separate statutory committee is also strongly supported and
9 indeed -- and has been obviously supported by the request of
10 Consumer Borrowers.

11 Third, it's undisputed that as a constituent group
12 the Consumer Borrowers are generally unsophisticated senior
13 citizens from lower socioeconomic communities that have
14 limited access and financial means to obtaining meaningful
15 legal representation. See, for example, the Debtors'
16 application to extend the bar date for Consumer Borrowers
17 where they stated that Consumers Borrowers may be unfamiliar
18 with the Chapter 11 process and typically are not
19 sophisticated and not represented by counsel.

20 See the Lombardo 1001 declaration at Paragraphs 40
21 to 41 where he's describing the reverse mortgages as --
22 individuals obtaining reverse mortgages as being eligible
23 only to persons of 62 years or older and also noting that
24 the average age of the borrowers here is 75 years old. See
25 also the Atlanta Legal Aid letter dated April 15 where the

1 stated that Consumers Borrowers are particularly vulnerable
2 and at the risk of harm in these Chapter 11 cases.

3 Many of the Consumer Borrowers who have been
4 arguably active in these cases are represented by non-profit
5 organizations and/or governmental consumer agencies such as
6 state legal aid who may themselves be unfamiliar with
7 federal bankruptcy proceedings and lack the financial
8 expertise and professionals to meaningful review of the
9 economics of the Debtors' plan or I should say the terms of
10 the Debtors' plan.

11 Fourth, the lack of adequate representation of the
12 Consumer Borrowers by the existing committee clearly favors
13 the formation of the Consumer Creditors Committee.

14 Finally, the scope of the mandate of the Consumer
15 Creditors Committee and the scope of its retention -- and
16 the scope of the retention of the proposed professionals are
17 narrowly tailored. As discussed herein, propose counsel to
18 the Consumer Creditors Committee has repeatedly emphasized
19 that the Committee does not intend to replicate the work
20 being undertaken by the Creditors Committee or to derail the
21 progress of these Chapter 11 cases.

22 He advises that the Committee will focus its
23 attention on the Consumer Borrower issues that have been
24 previously raised in the context of the plan and disclosure
25 statement objections including analyzing the Debtors' sale

1 process to understand what assets are being sold, how
2 consumer mortgages are being packaged as part of the sale,
3 assessing the impact of the sale on consumers rights, and
4 ensuring that the legal rights of the consumers are being
5 respected under the plan, including consumer rights under
6 Section 363(o) and the rights of setoff, recoupment, and
7 other defenses.

8 The Debtors argue that these Chapter 11 cases are
9 analogous to the bankruptcy proceedings in Rosecap in which
10 Judge Glenn denied a motion to appoint a consumer borrowers
11 committee in a pre-packaged case of a mortgage servicer.
12 See the motion at Paragraph 29 to 31. In that regard, the
13 Debtors maintain that the Creditors Committee can pursue the
14 Consumer Borrower issues including issues relating to
15 Section 363(o) in the event of a sale transaction and/or the
16 scope of the borrower non-discharged claims at confirmation.

17 Neither argument is convincing. First, there are
18 crucial differences between Rosecap and this case. Here,
19 the U.S. Trustee appointed the Consumer Creditors Committee
20 unlike the court in Rosecap, which was instead considering a
21 motion by certain consumer borrowers to appoint one pursuant
22 to Section 1102(a)(2) and opposition thereto made by key
23 constituencies including the creditors committee.

24 In addition, the consumer borrowers in Rosecap
25 face different issues and concerns than the consumer

1 borrowers in this case. Among other things, the consumer
2 borrowers in Rosecap had the benefit of a settlement entered
3 into between the debtors and the federal government, 49
4 state attorney generals, and 48 banking departments which
5 obligated the debtors to provide \$200 million towards
6 borrower relief for certain loans owned by the debtors and,
7 two, a consent order entered into between among others the
8 debtors and the Federal Reserve Board and the Federal
9 Deposit Insurance Company which required the debtors to make
10 improvements to their servicing business. See Rosecap 480
11 B.R at 561*2.

12 No such settlements or consent orders exist here
13 for the benefit of the Consumer Borrowers. Moreover, a
14 review of the docket in the Rosecap case reveals that the
15 sale orders entered in that case incorporated the
16 protections of Section 363(o). See, for example, Case
17 Number 12-12020, the sale order, ECF Number 2246 at
18 Paragraph 9.

19 Here, by contract, the Debtors' proposed plan does
20 not contemplate that Section 363 -- the protections afforded
21 by Section 363(o) will be available in either a sale
22 transaction or a reorganization transaction.

23 Finally, the Court in Rosecap determined that
24 based on the facts of that case, the creditors committee
25 could adequately represent the consumer borrowers.

1 Here, the Court finds that that's not the case and
2 that the Committee cannot effectively pursue the Consumer
3 Borrowers' concerns as to Section 363(o) protections or the
4 scope of the Debtors' discharge and release. That's because
5 pursuant to the Committee settlement the Creditors Committee
6 has committed to supporting the plan as currently drafted.

7 For all of those reasons discussed above, the
8 Creditors Committee here cannot adequately represent the
9 Consumers Borrowers' interests. Based upon the Court's de
10 novo review of this matter, the Court finds that the U.S.
11 Trustee did not err in appointing the Consumer Creditors
12 Committee. Accordingly, the Debtors' request that the Court
13 disband the Consumer Creditors Committee is denied.

14 The Court will now consider the alternative
15 request for relief. The Debtors -- as we noted, the Debtors
16 also seek in the alternative to limit the scope of the
17 Consumer Creditors Committee's mandate and to cap its fees
18 and expenses to \$250,000 in the aggregate. This aspect of
19 the motion is likewise respectfully denied. Insofar as the
20 Debtors and the 1 L lenders and other parties have a genuine
21 and legitimate concerns as to the Debtors' accrual of
22 administrative and litigation expenses as a result of the
23 Consumer Creditors Committee, those matters will be resolved
24 through the fee application process. See, for example, In
25 Re Dewey & LeBoeuf.

1 I'm satisfied that the U.S. Trustee and all
2 interested parties will have a meaningful opportunity in the
3 event that they believe that the fees incurred by the
4 professionals retained by the Consumer Creditors Committee
5 are excessive, we will hear from them. I note that just --
6 that the Committee's financial professionals are seeking to
7 be retained and that the requested retention is at what they
8 represent to be and in my experience, it seems to be a
9 below-market compensation package.

10 Based upon all of the foregoing, I most
11 respectfully deny the Debtors' motion to disband the
12 creditors -- excuse me, the Consumer Creditors Committee and
13 deny their request for alternative relief. The record is so
14 ordered. Thank you all very much.

15 (Whereupon these proceedings were concluded at
16 4:46 PM)

I N D E X

RULINGS

Page Line

Motion to Disband Consumer Creditors

48

11

Committee Denied

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya

Ledanski Hyde

Digitally signed by Sonya Ledanski
Hyde
DN: cn=Sonya Ledanski Hyde, o, ou,
email=digital@veritext.com, c=US
Date: 2019.05.21 16:14:35 -04'00'

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

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Date: May 21, 2019

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